

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY APRIL 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1221

**Introduced by Assembly Member Wilk
(Coauthors: Assembly Members Conway, Beth Gaines, Gorell,
Harkey, Jones, Morrell, and Nestande)**

February 22, 2013

An act to amend Sections 44932, 44936, 44938, 44939, and 44944; and 44945 of, and to add Section 44932.5 to, and to repeal Section 45047 of, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1221, as amended, Wilk. School employees: discipline: suspension and dismissal.

(1) Existing law prohibits a permanent school employee from being dismissed except for one or more specified offenses causes.

This bill would *include serious or egregious unprofessional conduct, as defined, as a ground for dismissal of a permanent school employee. The bill would also prohibit a collective bargaining agreement entered into or renewed on or after January 1, 2014, 2015, from requiring the removal from an employee's record, after a specified time period, from an employee's record of records pertaining to discipline, complaints, reprimands, or investigations relating to the employee's commission, or potential commission, of one of those specified offenses.*

(2) Existing law authorizes a governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend him or her for specified causes at the expiration of 30 days

from the date of service of the notice, unless the employee demands a hearing. Existing law prohibits that notice from being given between May 15th and September 15th in any year.

This bill would remove that prohibition.

(3) Existing law prohibits the governing board of a school district from acting upon any charges of unprofessional conduct, or unsatisfactory performance, unless at least 45, or 90, calendar days, respectively, prior to the date of the filing of the charges the governing board, or its authorized representative, has given the employee written notice, as specified.

This bill would remove those 45-day and 90-day requirements.

(4) *Existing law authorizes the governing board of a school district, upon the filing of written charges or upon a written statement of charges for certain conduct, to immediately suspend the employee from his or her duties in accordance with specified procedures.*

This bill would authorize the governing board to immediately suspend an employee for serious or egregious unprofessional conduct pursuant to those procedures.

(4)

(5) Existing law establishes a Commission on Professional Competence for each dismissal or suspension hearing requested by an employee, consisting of specified members, and requires the proceeding to be conducted in accordance with the Administrative Procedure Act. Existing law deems the decision of the Commission on Professional Competence to be the final decision of the governing board of the school district.

This bill, *for a hearing that involves serious or egregious unprofessional conduct*, would delete the provisions providing for the establishment of a Commission on Professional Competence, and would instead require the proceedings to be conducted pursuant to the Administrative Procedure Act by an administrative law judge. The bill would provide that the decision of the administrative law judge would be advisory, and the final decision regarding the discipline of the employee would be determined by action of the governing board of the school district. ~~The bill would provide that an employee requesting a hearing may be placed on administrative leave without pay, and that an employee who is placed on administrative leave would be required to be paid his or her regular salary if he or she furnishes to the school district acceptable security, as specified.~~

~~(5) Existing law prohibits testimony from being given or evidence being introduced at the hearing relating to matters that occurred more than 4 years prior to the date of the filing of the notice of dismissal or suspension.~~

~~This bill would remove that 4-year limitation.~~

~~(6) This bill would make nonsubstantive and conforming changes.~~

~~(6) By imposing additional requirements on governing boards of school districts, this bill would impose a state-mandated local program.~~

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44932 of the Education Code is amended
2 to read:

3 44932. (a) ~~No~~A permanent employee shall *not* be dismissed
4 except for one or more of the following causes:

5 (1) Immoral *conduct* or unprofessional conduct.

6 (2) *Serious or egregious unprofessional conduct as defined in*
7 *Section 44939.*

8 ~~(2)~~

9 (3) Commission, aiding, or advocating the commission of acts
10 of criminal syndicalism, as prohibited by Chapter 188 of the
11 Statutes of 1919, or in any amendment thereof.

12 ~~(3)~~

13 (4) Dishonesty.

14 ~~(4)~~

15 (5) Unsatisfactory performance.

16 ~~(5)~~

17 (6) Evident unfitness for service.

18 ~~(6)~~

19 (7) Physical or mental condition unfitting him or her to instruct
20 or associate with children.

1 ~~(7)~~
 2 (8) Persistent violation of or refusal to obey the school laws of
 3 the state or reasonable regulations prescribed for the government
 4 of the public schools by the ~~State Board of Education~~ *state board*
 5 or by the governing board of the school district employing him or
 6 her.

7 ~~(8)~~
 8 (9) Conviction of a felony or of ~~any~~ *a* crime involving moral
 9 turpitude.

10 ~~(9)~~
 11 (10) Violation of Section 51530 or conduct specified in Section
 12 1028 of the Government Code, added by Chapter 1418 of the
 13 Statutes of 1947.

14 ~~(10)~~
 15 (11) Knowing membership by the employee in the Communist
 16 Party.

17 ~~(11)~~
 18 (12) Alcoholism or other drug abuse ~~which~~ *that* makes the
 19 employee unfit to instruct or associate with children.

20 (b) The governing board of a school district may suspend
 21 without pay for a specific period of time on grounds of
 22 unprofessional conduct a permanent certificated employee or, in
 23 a school district with an average daily attendance of less than 250
 24 pupils, a probationary employee, pursuant to the procedures
 25 specified in Sections 44933, 44934, 44935, 44936, 44937, 44943,
 26 and 44944. This authorization shall not apply to ~~any~~ *a* school
 27 district ~~which~~ *that* has adopted a collective bargaining agreement
 28 pursuant to subdivision (b) of Section 3543.2 of the Government
 29 Code.

30 **SECTION 1.**

31 **SEC. 2.** Section 44932.5 is added to the Education Code, to
 32 read:

33 44932.5. A collective bargaining agreement entered into or
 34 renewed on or after January 1, ~~2014~~, *2015*, shall not require the
 35 removal ~~from an employee's record~~, after a specified time period,
 36 ~~from an employee's record~~ of records pertaining to discipline,
 37 complaints, reprimands, or investigations relating to the employee's
 38 commission, or potential commission, of ~~an offense~~ *any conduct*
 39 listed in Section 44932.

1 ~~SEC. 2.~~

2 *SEC. 3.* Section 44936 of the Education Code is amended to
3 read:

4 44936. The notice of dismissal or suspension in a proceeding
5 initiated pursuant to Section 44934 shall be in writing and be served
6 upon the employee personally or by United States registered mail
7 addressed to the employee at the employee's last known address.
8 A copy of the charges filed, containing the information required
9 by Section 11503 of the Government Code, together with a copy
10 of the provisions of this article, shall be attached to the notice.

11 ~~SEC. 3.~~

12 *SEC. 4.* Section 44938 of the Education Code is amended to
13 read:

14 44938. (a) The governing board of any school district shall
15 not act upon any charges of unprofessional conduct unless the
16 governing board or its authorized representative has given the
17 employee against whom the charge is filed written notice of the
18 unprofessional conduct, specifying the nature of the unprofessional
19 conduct with specific instances of behavior and with particularity
20 as to furnish the employee an opportunity to correct his or her
21 faults and overcome the grounds for the charge. The written notice
22 shall include the evaluation made pursuant to Article 11
23 (commencing with Section 44660) of Chapter 3, if applicable to
24 the employee.

25 (b) The governing board of any school district shall not act upon
26 any charges of unsatisfactory performance unless it acts in
27 accordance with the provisions of paragraph (1) or (2):

28 (1) The governing board or its authorized representative has
29 given the employee against whom the charge is filed, written notice
30 of the unsatisfactory performance, specifying the nature of the
31 unsatisfactory performance with specific instances of behavior
32 and with particularity as to furnish the employee an opportunity
33 to correct his or her faults and overcome the grounds for the charge.
34 The written notice shall include the evaluation made pursuant to
35 Article 11 (commencing with Section 44660) of Chapter 3, if
36 applicable to the employee.

37 (2) The governing board may act during the time period
38 composed of the last one-fourth of the schooldays it has scheduled
39 for purposes of computing apportionments in any fiscal year if,
40 before the beginning of that time period, the governing board or

1 its authorized representative has given the employee against whom
2 the charge is filed written notice of the unsatisfactory performance,
3 specifying the nature of the unsatisfactory performance with
4 specific instances of behavior and with particularity as to furnish
5 the employee an opportunity to correct his or her faults and
6 overcome the grounds for the charge. The written notice shall
7 include the evaluation made pursuant to Article 11 (commencing
8 with Section 44660) of Chapter 3, if applicable to the employee.

9 (c) (1) “Unprofessional conduct” as used in this section means,
10 and refers to, the unprofessional conduct particularly specified as
11 a cause for dismissal or suspension in Sections 44932 and 44933,
12 *other than serious or egregious unprofessional conduct*, and does
13 not include any other cause for dismissal specified in Section
14 44932.

15 (2) “Unsatisfactory performance” as used in this section means,
16 and refers only to, the unsatisfactory performance particularly
17 specified as a cause for dismissal in Section 44932 and does not
18 include any other cause for dismissal specified in Section 44932.

19 ~~SEC. 4. Section 44939 of the Education Code is amended to~~
20 ~~read:~~

21 ~~44939. (a) Upon the filing of written charges, duly signed and~~
22 ~~verified by the person filing them with the governing board of a~~
23 ~~school district, or upon a written statement of charges formulated~~
24 ~~by the governing board, charging a permanent employee of the~~
25 ~~district with immoral conduct, conviction of a felony or of any~~
26 ~~crime involving moral turpitude, with incompetency due to mental~~
27 ~~disability, with willful refusal to perform regular assignments~~
28 ~~without reasonable cause, as prescribed by reasonable rules and~~
29 ~~regulations of the employing school district, with violation of~~
30 ~~Section 51530, with knowing membership by the employee in the~~
31 ~~Communist Party or with violation of any provision in Sections~~
32 ~~7001 to 7007, inclusive, the governing board may, if it deems such~~
33 ~~action necessary, immediately suspend the employee from his or~~
34 ~~her duties and give notice to the employee of his or her suspension,~~
35 ~~and that 30 days after service of the notice, he or she will be~~
36 ~~dismissed, unless he or she demands a hearing.~~

37 ~~(b) If the permanent employee is suspended upon charges of~~
38 ~~knowing membership by the employee in the Communist Party or~~
39 ~~for any violation of Section 7001, 7002, 7003, 7006, 7007, or~~
40 ~~51530, he or she may within 10 days after service of notice of~~

1 ~~suspension, file with the governing board a verified denial, in~~
2 ~~writing, of the charges. A permanent employee who demands a~~
3 ~~hearing within the 30-day period shall continue to be paid his or~~
4 ~~her regular salary during the period of suspension and until the~~
5 ~~final decision of the governing board of the school district, if and~~
6 ~~during such time as the employee furnishes to the school district~~
7 ~~a suitable bond, or other security acceptable to the governing board,~~
8 ~~as a guarantee that the employee will repay to the school district~~
9 ~~the amount of salary paid during the period of suspension in case~~
10 ~~the decision of the governing board is that the employee shall be~~
11 ~~dismissed. If it is determined that the employee may not be~~
12 ~~dismissed, the school board shall reimburse the employee for the~~
13 ~~cost of the bond.~~

14 *SEC. 5. Section 44939 of the Education Code is amended to*
15 *read:*

16 44939. (a) Upon the filing of written charges, duly signed
17 and verified by the person filing them with the governing board
18 of a school district, or upon a written statement of charges
19 formulated by the governing board, charging a permanent employee
20 of the district with *serious or egregious unprofessional conduct,*
21 *immoral conduct, conviction of a felony or of any crime involving*
22 *moral turpitude, with incompetency due to mental disability, with*
23 *willful refusal to perform regular assignments without reasonable*
24 *cause, as prescribed by reasonable rules and regulations of the*
25 *employing school district, with violation of Section 51530, with*
26 *knowing membership by the employee in the Communist Party or*
27 *with violation of any provision in Sections 7001 to 7007, inclusive,*
28 *the governing board may, if it deems such action necessary,*
29 *immediately suspend the employee from his duties and give notice*
30 *to him of his suspension, and that 30 days after service of the*
31 *notice, he will be dismissed, unless he demands a hearing. If the*
32 *permanent employee is suspended upon charges of knowing*
33 *membership by the employee in the Communist Party or for any*
34 *violation of Section 7001, 7002, 7003, 7006, 7007, or 51530, he*
35 *may within 10 days after service upon him of notice of such*
36 *suspension file with the governing board a verified denial, in*
37 *writing, of the charges. In such event the permanent employee*
38 *who demands a hearing within the 30-day period shall continue*
39 *to be paid his regular salary during the period of suspension and*
40 *until the entry of the decision of the Commission on Professional*

1 Competence, if and during such time as he furnishes to the school
2 district a suitable bond, or other security acceptable to the
3 governing board, as a guarantee that the employee will repay to
4 the school district the amount of salary so paid to him during the
5 period of suspension in case the decision of the Commission on
6 Professional Competence is that he shall be dismissed. If it is
7 determined that the employee may not be dismissed, the school
8 board shall reimburse the employee for the cost of the bond.

9 *(b) As used in this article, "serious or egregious unprofessional*
10 *conduct" means misconduct reasonably related to any offense as*
11 *described in Sections 44010 and 44011 of this code, and Sections*
12 *11165.2 to 11165.6, inclusive, of the Penal Code.*

13 ~~SEC. 5. Section 44944 of the Education Code is amended to~~
14 ~~read:~~

15 ~~44944. (a) (1) In a dismissal or suspension proceeding initiated~~
16 ~~pursuant to Section 44934, if a hearing is requested by the~~
17 ~~employee, the hearing shall be commenced within 60 days from~~
18 ~~the date of the employee's demand for a hearing. The hearing shall~~
19 ~~be initiated, conducted, and a decision made in accordance with~~
20 ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division~~
21 ~~3 of Title 2 of the Government Code. However, the hearing date~~
22 ~~shall be established after consultation with the employee and the~~
23 ~~governing board, or their representatives, and the governing board~~
24 ~~shall have all of the power granted to an agency in that chapter,~~
25 ~~except that the right of discovery of the parties shall not be limited~~
26 ~~to those matters set forth in Section 11507.6 of the Government~~
27 ~~Code but shall include the rights and duties of any party in a civil~~
28 ~~action brought in a superior court under Title 4 (commencing with~~
29 ~~Section 2016.010) of Part 4 of the Code of Civil Procedure.~~
30 ~~Notwithstanding any provision to the contrary, and except for the~~
31 ~~taking of oral depositions, no discovery shall occur later than 30~~
32 ~~calendar days after the employee is served with a copy of the~~
33 ~~accusation pursuant to Section 11505 of the Government Code.~~
34 ~~In all cases, discovery shall be completed prior to seven calendar~~
35 ~~days before the date upon which the hearing commences. If any~~
36 ~~continuance is granted pursuant to Section 11524 of the~~
37 ~~Government Code, the time limitation for commencement of the~~
38 ~~hearing as provided in this subdivision shall be extended for a~~
39 ~~period of time equal to the continuance. However, the extension~~
40 ~~shall not include that period of time attributable to an unlawful~~

1 refusal by either party to allow the discovery provided for in this
2 section.

3 ~~(2) If the right of discovery granted under paragraph (1) is~~
4 ~~denied by either the employee or the governing board, all of the~~
5 ~~remedies in Chapter 7 (commencing with Section 2023.010) of~~
6 ~~Title 4 of Part 4 of the Code of Civil Procedure shall be available~~
7 ~~to the party seeking discovery, and the court of proper jurisdiction~~
8 ~~to entertain his or her motion shall be the superior court of the~~
9 ~~county in which the hearing will be held.~~

10 ~~(3) The time periods in this section and of Chapter 5~~
11 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~
12 ~~2 of the Government Code and of Title 4 (commencing with~~
13 ~~Section 2016.010) of Part 4 of the Code of Civil Procedure shall~~
14 ~~not be applied so as to deny discovery in a hearing conducted~~
15 ~~pursuant to this section.~~

16 ~~(4) The superior court of the county in which the hearing will~~
17 ~~be held may, upon motion of the party seeking discovery, suspend~~
18 ~~the hearing so as to comply with the requirement of paragraph (3).~~

19 ~~(5) A witness shall not be permitted to testify at the hearing~~
20 ~~except upon oath or affirmation.~~

21 ~~(b) The hearing provided for in this section shall be conducted~~
22 ~~by an administrative law judge of the Office of Administrative~~
23 ~~Hearings who shall be responsible for ensuring that the legal rights~~
24 ~~of the parties are protected at the hearing.~~

25 ~~(e) (1) The administrative law judge shall prepare a written~~
26 ~~decision containing findings of fact, determinations of issues, and~~
27 ~~a disposition that shall be, solely, one of the following:~~

28 ~~(A) That the employee should be dismissed.~~

29 ~~(B) That the employee should be suspended for a specific period~~
30 ~~of time without pay.~~

31 ~~(C) That the employee should not be dismissed or suspended.~~

32 ~~(2) The decision of the administrative law judge that the~~
33 ~~employee should not be dismissed or suspended shall not be based~~
34 ~~on nonsubstantive procedural errors committed by the school~~
35 ~~district or governing board unless the errors are prejudicial errors.~~

36 ~~(3) The administrative law judge shall not have the power to~~
37 ~~dispose of the charge of dismissal by imposing probation or other~~
38 ~~alternative sanctions. The imposition of suspension pursuant to~~
39 ~~subparagraph (B) of paragraph (1) shall be available only in a~~

1 ~~suspension proceeding authorized pursuant to subdivision (b) of~~
2 ~~Section 44932 or Section 44933.~~

3 ~~(4) The decision of the administrative law judge shall be~~
4 ~~advisory, and the final decision regarding the discipline of the~~
5 ~~employee shall be determined by actions of the governing board~~
6 ~~of the school district.~~

7 ~~(5) The governing board may adopt from time to time rules and~~
8 ~~procedures not inconsistent with this section as may be necessary~~
9 ~~to effectuate this section.~~

10 ~~(6) The governing board and the employee shall have the right~~
11 ~~to be represented by counsel.~~

12 ~~(d) (1) If the governing board determines that the employee~~
13 ~~should be dismissed or suspended, the governing board and the~~
14 ~~employee shall share equally the expenses of the hearing, including~~
15 ~~the cost of the administrative law judge. The Controller shall pay~~
16 ~~all claims submitted pursuant to this paragraph from the General~~
17 ~~Fund, and may prescribe reasonable rules, regulations, and forms~~
18 ~~for the submission of the claims. The employee and the governing~~
19 ~~board shall pay their own attorney's fees.~~

20 ~~(2) If the governing board determines that the employee should~~
21 ~~not be dismissed or suspended, the governing board shall pay the~~
22 ~~expenses of the hearing, including the cost of the administrative~~
23 ~~law judge.~~

24 ~~(3) If the employee petitions a court of competent jurisdiction~~
25 ~~for review of the decision of the governing board, the payment of~~
26 ~~expenses to the administrative law judge required by this~~
27 ~~subdivision shall not be stayed.~~

28 ~~(4) If the decision of the governing board is finally reversed or~~
29 ~~vacated by a court of competent jurisdiction, the employee, having~~
30 ~~paid a portion of the expenses of the hearing, including the cost~~
31 ~~of the administrative law judge, shall be entitled to reimbursement~~
32 ~~from the governing board for the expenses.~~

33 ~~(e) The hearing provided for in this section shall be conducted~~
34 ~~in a place selected by agreement. In the absence of agreement, the~~
35 ~~place shall be selected by the administrative law judge.~~

36 ~~(f) (1) For the duration of the hearing conducted pursuant to~~
37 ~~this section, the employee may be placed on administrative leave~~
38 ~~without pay.~~

39 ~~(2) If an employee is placed on administrative leave pursuant~~
40 ~~to this section, the employee shall continue to be paid his or her~~

1 regular salary during the period of his or her administrative leave
2 of absence if during that time he or she furnishes to the school
3 district a suitable bond or other security acceptable to the governing
4 board, as a guarantee that the school district will be repaid the
5 amount of salary during the employee's leave of absence if, by
6 action of the governing board, a final decision is made to terminate
7 the employee, or the employee fails or refuses to return to service
8 following a decision not to terminate the employee. If the
9 governing board determines that the employee should not be
10 dismissed, the governing board shall reimburse the employee for
11 the cost of the bond upon his or her return to service in the school
12 district.

13 ~~(3) If the employee prevails at the hearing, the administrative~~
14 ~~law judge may recommend a suitable compensatory remedy,~~
15 ~~including back wages and benefits, which the governing board~~
16 ~~may adopt if the employee is reinstated. An employee who is~~
17 ~~reinstated pursuant to this section, either by the governing board~~
18 ~~or by order of a court of competent jurisdiction, is entitled to~~
19 ~~reasonable back wages and benefits.~~

20 *SEC. 6. Section 44944 of the Education Code is amended to*
21 *read:*

22 44944. (a) (1) In a dismissal or suspension proceeding initiated
23 pursuant to Section 44934, if a hearing is requested by the
24 employee, the hearing shall be commenced within 60 days from
25 the date of the employee's demand for a hearing. The hearing shall
26 be initiated, conducted, and a decision made in accordance with
27 Chapter 5 (commencing with Section 11500) of Part 1 of Division
28 3 of Title 2 of the Government Code. ~~However, the~~ *The* hearing
29 date shall be established after consultation with the employee and
30 the governing board, or their ~~representatives, and the~~
31 *representatives. Except as specified in subdivision (c), the*
32 *Commission on Professional Competence shall have all of the*
33 *power granted to an agency in that chapter, except that the right*
34 *of discovery of the parties shall not be limited to those matters set*
35 *forth in Section 11507.6 of the Government Code but shall include*
36 *the rights and duties of any party in a civil action brought in a*
37 *superior court under Title 4 (commencing with Section 2016.010)*
38 *of Part 4 of the Code of Civil Procedure. Notwithstanding any*
39 *provision to the contrary, and except for the taking of oral*
40 *depositions, no discovery shall occur later than 30 calendar days*

1 after the employee is served with a copy of the accusation pursuant
2 to Section 11505 of the Government Code. In all cases, discovery
3 shall be completed prior to seven calendar days before the date
4 upon which the hearing commences. If any continuance is granted
5 pursuant to Section 11524 of the Government Code, the time
6 limitation for commencement of the hearing as provided in this
7 subdivision shall be extended for a period of time equal to the
8 continuance. However, the extension shall not include that period
9 of time attributable to an unlawful refusal by either party to allow
10 the discovery provided for in this section.

11 (2) If the right of discovery granted under paragraph (1) is
12 denied by either the employee or the governing board, all of the
13 remedies in Chapter 7 (commencing with Section 2023.010) of
14 Title 4 of Part 4 of the Code of Civil Procedure shall be available
15 to the party seeking discovery and the court of proper jurisdiction,
16 to entertain his or her motion, shall be the superior court of the
17 county in which the hearing will be held.

18 (3) The time periods in this section and of Chapter 5
19 (commencing with Section 11500) of Part 1 of Division 3 of Title
20 2 of the Government Code and of Title 4 (commencing with
21 Section 2016.010) of Part 4 of the Code of Civil Procedure shall
22 not be applied so as to deny discovery in a hearing conducted
23 pursuant to this section.

24 (4) The superior court of the county in which the hearing will
25 be held may, upon motion of the party seeking discovery, suspend
26 the hearing so as to comply with the requirement of ~~the preceding~~
27 paragraph (3).

28 (5) No witness shall be permitted to testify at the hearing except
29 upon oath or affirmation. No testimony shall be given or evidence
30 introduced relating to matters that occurred more than four years
31 prior to the date of the filing of the notice. Evidence of records
32 regularly kept by the governing board concerning the employee
33 may be introduced, but no decision relating to the dismissal or
34 suspension of any employee shall be made based on charges or
35 evidence of any nature relating to matters occurring more than
36 four years prior to the filing of the notice.

37 (b) (1) ~~The~~ *Except as specified in subdivision (c), the* hearing
38 provided for in this section shall be conducted by a Commission
39 on Professional Competence. One member of the commission shall
40 be selected by the employee, one member shall be selected by the

1 governing board, and one member shall be an administrative law
2 judge of the Office of Administrative Hearings who shall be
3 chairperson and a voting member of the commission and shall be
4 responsible for assuring that the legal rights of the parties are
5 protected at the hearing. If either the governing board or the
6 employee for any reason fails to select a commission member at
7 least seven calendar days prior to the date of the hearing, the failure
8 shall constitute a waiver of the right to selection, and the county
9 board of education or its specific designee shall immediately make
10 the selection. If the county board of education is also the governing
11 board of the school district or has by statute been granted the
12 powers of a governing board, the selection shall be made by the
13 Superintendent, who shall be reimbursed by the school district for
14 all costs incident to the selection.

15 (2) The member selected by the governing board and the
16 member selected by the employee shall not be related to the
17 employee and shall not be employees of the district initiating the
18 dismissal or suspension and shall hold a currently valid credential
19 and have at least five years' experience within the past 10 years
20 in the discipline of the employee.

21 ~~(e)-(1)~~

22 (3) The decision of the Commission on Professional Competence
23 shall be made by a majority vote, and the commission shall prepare
24 a written decision containing findings of fact, determinations of
25 issues, and a disposition that shall be, solely, one of the following:

26 (A) That the employee should be dismissed.

27 (B) That the employee should be suspended for a specific period
28 of time without pay.

29 (C) That the employee should not be dismissed or suspended.

30 ~~(2)~~

31 (4) The decision of the Commission on Professional Competence
32 that the employee should not be dismissed or suspended shall not
33 be based on nonsubstantive procedural errors committed by the
34 school district or governing board unless the errors are prejudicial
35 errors.

36 ~~(3)~~

37 (5) The commission shall not have the power to dispose of the
38 charge of dismissal by imposing probation or other alternative
39 sanctions. The imposition of suspension pursuant to subparagraph
40 (B) of paragraph ~~(1)~~ (3) shall be available only in a suspension

1 proceeding authorized pursuant to subdivision (b) of Section 44932
2 or Section 44933.

3 ~~(4)~~

4 (6) The decision of the Commission on Professional Competence
5 shall be deemed to be the final decision of the governing board.

6 ~~(5) The board may adopt from time to time rules and procedures
7 not inconsistent with this section as may be necessary to effectuate
8 this section.~~

9 ~~(6) The governing board and the employee shall have the right
10 to be represented by counsel.~~

11 ~~(d) (1)~~

12 (7) If the member selected by the governing board or the
13 member selected by the employee is employed by any school
14 district in this state, the member shall, during any service on a
15 Commission on Professional Competence, continue to receive
16 salary, fringe benefits, accumulated sick leave, and other leaves
17 and benefits from the district in which the member is employed,
18 but shall receive no additional compensation or honorariums for
19 service on the commission.

20 ~~(2)~~

21 (8) If service on a Commission on Professional Competence
22 occurs during summer recess or vacation periods, the member shall
23 receive compensation proportionate to that received during the
24 current or immediately preceding contract period from the
25 member's employing district, whichever amount is greater.

26 ~~(e) (1)~~

27 (9) If the Commission on Professional Competence determines
28 that the employee should be dismissed or suspended, the governing
29 board and the employee shall share equally the expenses of the
30 hearing, including the cost of the administrative law judge. The
31 state shall pay any costs incurred under paragraph ~~(2)~~ of
32 ~~subdivision (d); (8);~~ the reasonable expenses, as determined by
33 the administrative law judge, of the member selected by the
34 governing board and the member selected by the employee,
35 including, but not limited to, payments or obligations incurred for
36 travel, meals, and ~~lodging~~, *lodging*; and the cost of the substitute
37 or substitutes, if any, for the member selected by the governing
38 board and the member selected by the employee. The Controller
39 shall pay all claims submitted pursuant to this paragraph from the
40 General Fund, and may prescribe reasonable rules, regulations,

1 and forms for the submission of the claims. The employee and the
2 governing board shall pay their own attorney’s fees.

3 ~~(2)~~

4 (10) If the Commission on Professional Competence determines
5 that the employee should not be dismissed or suspended, the
6 governing board shall pay the expenses of the hearing, including
7 the cost of the administrative law judge, ~~judge~~; any costs incurred
8 under paragraph ~~(2)~~ of subdivision ~~(d)~~; (8); the reasonable
9 expenses, as determined by the administrative law judge, of the
10 member selected by the governing board and the member selected
11 by the employee, including, but not limited to, payments or
12 obligations incurred for travel, meals, and ~~lodging~~, *lodging*; the
13 cost of the substitute or substitutes, if any, for the member selected
14 by the governing board and the member selected by the ~~employee~~,
15 *employee*; and reasonable attorney’s fees incurred by the employee.

16 ~~(3)~~

17 (11) As used in this section, *subdivision*, “reasonable expenses”
18 shall not be deemed “compensation” within the meaning of
19 ~~subdivision (d)~~. *paragraph (7) or (8)*.

20 ~~(4)~~

21 (12) If either the governing board or the employee petitions a
22 court of competent jurisdiction for review of the decision of the
23 commission, the payment of expenses to members of the
24 commission required by this subdivision shall not be stayed.

25 ~~(5) (A)~~

26 (13) If the decision of the commission is finally reversed or
27 vacated by a court of competent jurisdiction, either the state, having
28 paid the commission members’ expenses, shall be entitled to
29 reimbursement from the governing board for those expenses, or
30 the governing board, having paid the expenses, shall be entitled
31 to reimbursement from the ~~state~~.

32 ~~(B) Additionally, state. Additionally,~~ either the employee, having
33 paid a portion of the expenses of the hearing, including the cost
34 of the administrative law judge, shall be entitled to reimbursement
35 from the governing board for the expenses, or the governing board,
36 having paid its portion and the employee’s portion of the expenses
37 of the hearing, including the cost of the administrative law judge,
38 shall be entitled to reimbursement from the employee for that
39 portion of the expenses.

40 ~~(f)~~

1 (14) The hearing provided for in this ~~section~~ *subdivision* shall
 2 be conducted in a place selected by agreement among the members
 3 of the commission. In the absence of agreement, the place shall
 4 be selected by the administrative law judge.

5 (c) (1) *A hearing provided for in this section that is requested*
 6 *by an employee who is charge with serious or egregious*
 7 *unprofessional conduct, as defined in subdivision (c) of Section*
 8 *44939, shall be conducted solely by an administrative law judge*
 9 *of the Office of Administrative Hearings.*

10 (2) *The decision of the administrative law judge shall be*
 11 *advisory, and the final decision regarding the discipline of the*
 12 *employee shall be made by action of the governing board of the*
 13 *school district. The governing board shall, before making its final*
 14 *decision, allow the employee to submit a written statement or*
 15 *response or, at the election of the governing board, an oral*
 16 *statement concerning the disciplinary action, and shall only*
 17 *consider the record produced during the hearing conducted by*
 18 *the administrative law judge. The governing board's final decision*
 19 *shall be subject to review and appeal pursuant to Section 1094.5*
 20 *of the Code of Civil Procedure.*

21 (3) *A hearing conducted pursuant to this subdivision shall be*
 22 *conducted in a place selected by the administrative law judge.*

23 (d) *The governing board of a school district may adopt rules*
 24 *and procedures consistent with this section as may be necessary*
 25 *to effectuate this section.*

26 (e) *The governing board of a school district and the employee*
 27 *shall have the right to be represented by counsel.*

28 ~~SEC. 6. Section 44945 of the Education Code is amended to~~
 29 ~~read:~~

30 ~~44945. The decision of the governing board may, on petition~~
 31 ~~of the employee, be reviewed by a court of competent jurisdiction~~
 32 ~~in the same manner as a decision made by a hearing officer under~~
 33 ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division~~
 34 ~~3 of Title 2 of the Government Code. The court, on review, shall~~
 35 ~~exercise its independent judgment on the evidence. The proceeding~~
 36 ~~shall be set for hearing at the earliest possible date and shall take~~
 37 ~~precedence over all other cases, except older matters of the same~~
 38 ~~character and matters to which special precedence is given by law.~~

39 ~~SEC. 7. Section 45047 of the Education Code is repealed.~~

1 ~~SEC. 8.~~

2 *SEC. 7.* If the Commission on State Mandates determines that
3 this act contains costs mandated by the state, reimbursement to
4 local agencies and school districts for those costs shall be made
5 pursuant to Part 7 (commencing with Section 17500) of Division
6 4 of Title 2 of the Government Code.

O